

TESTIMONY OF
STATE SENATOR NEIL BRESLIN OF NEW YORK

ON BEHALF OF
THE NATIONAL CONFERENCE OF INSURANCE LEGISLATORS

BEFORE THE
U.S. SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

REGARDING
THE PROPOSED AUTO CHOICE REFORM ACT
(S. 837)

JUNE 9, 1999

Good morning, Chairman McCain, Senator Hollings, and members of the Committee. My name is Neil Breslin. I represent the people of the 42nd Senatorial District in the New York State Senate. I am also a member of the Executive Committee of the National Conference of Insurance Legislators (NCOIL) and it is in that capacity that I testify before you this morning.

NCOIL is an organization of state legislators whose main area of public policy concern is insurance legislation and regulation. Many legislators active in NCOIL either chair or are members of the committee responsible for insurance legislation in their respective state houses across the country.

I am here to testify in opposition to S. 837, the Auto Choice Reform Act.

Let me make one point clear at the outset. NCOIL does not oppose no-fault automobile insurance. NCOIL has supported initiatives aimed at enactment of no-fault laws at the state level. NCOIL has developed and adopted a strong, "verbal threshold" no-fault model act, the Automobile Accident Compensation and Cost Saving Model Act. The model bill is available to states that want to enact no-fault auto insurance. Several states, acting on their own, have enacted no-fault laws. Florida, Michigan and New York have strong verbal threshold no-fault laws. Kentucky, New Jersey, and Pennsylvania have choice no-fault laws. Other states that have no-fault laws are Colorado, Hawaii, Kansas, Massachusetts, Minnesota, North Dakota and Utah.

NCOIL believes that that the state, not the federal government, should make public policy decisions on choice no-fault, verbal threshold no-fault or any other kind of no-fault. That's what has been happening in states like Florida and Texas. That's what has been happening and that's what should keep on happening in states across the country.

NCOIL stated its unequivocal opposition to federal choice no-fault in a resolution adopted at the NCOIL Annual Meeting on November 16, 1997 in Scottsdale, Arizona. NCOIL believes that S. 837 runs contrary to the McCarran-Ferguson Act and its long-standing Congressional mandate empowering the states to regulate the business of insurance and to formulate public policy when it comes to insurance.

NCOIL believes that it is poor public policy to force the creation of new state insurance laws via federal mandate. The variables affecting automobile insurance differ from state to state, making a federally imposed approach to automobile insurance impractical.

Now I would like to address a separate issue. That issue concerns claims by proponents that S. 837 would achieve \$193 billion in cost savings. Such claims are long on imagination but short on reality. As noted in a September 1998 statement by the American Academy of Actuaries, there are too many variables to put a figure on those cost savings. The Academy said there was no way to know how many states would not opt out of a choice no-fault proposal. In those states that do elect a choice no-fault system, it is impossible to estimate how many consumers will elect coverage.

And, no matter what level of savings are achieved, there is no guarantee that insurers would pass them on to consumers through lower insurance premiums.

Proponents of federal auto choice no-fault initiatives argue that the "opt out" provisions in the legislation leave authority with the states.

I say their argument is flawed. It is flawed in regard to timing and in regard to practicality.

As to timing, it is not realistic for states to weigh all the issues relating to choice no-fault within one year or legislative session following enactment, as stipulated within S. 837. As legislators, you know that any serious lawmaking takes more time than that. Besides, time does not always turn a bad idea into a good one. The preemption of state authority is the preemption of state authority, no matter how much time is allowed for deciding the issue.

As to practicality, McCarran-Ferguson has stood the test of more than one-half century. Over that span insurance regulation and insurance markets, though not perfect, have worked and worked exceedingly well. Over those years Congress, in its wisdom, has rejected several initiatives that would have undermined state authority. I refer to proposals to undermine state laws that regulate insurance rates, to establish a system of dual state-federal regulation of insurers, and to intervene in the setting of inner city fire insurance rates by Fair Access to Insurance Requirement (FAIR) plans. Those initiatives failed because the situations they proposed to address were indeed being addressed by the states.

Only in discrete situations, where insurance markets have failed to function, and it has been beyond the authority or power of state insurance regulators to correct the situations, has Congress intervened in the insurance marketplace. In these situations, Congress enacted the federal crime insurance program and the federal flood insurance program.

Both of these programs were created to address an inability to obtain insurance at a fair price. It has yet to be shown that such a situation exists in the automobile insurance markets today.

In summation, S. 837 represents a sharp departure from the realistic wisdom embodied in McCarran-Ferguson that public policy issues regarding insurance should be left to the states. What's more, the bill cannot keep its promises. What's worse, it tries to fix what is not broken.

Thank you. I would be happy to answer your questions.